The Honorable Ricardo Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REALNETWORKS, INC., a Washington corporation, Plaintiff, vs. MLB ADVANCED MEDIA, L.P., a Delaware limited partnership Defendant.	No. CV04-0511FDB DEFENDANT'S MOTION FOR PROTECTIVE ORDER STAYING DISCOVERY **Note on Motion Calendar: August 30, 2004**

TO: Ralph H. Palumbo
Lynn M. Engel
Denise L. Ashbaugh
Summit Law Group PLLC
315 Fifth Avenue South, Suite 1000
Seattle, Washington, 98104-2682
Attorneys for RealNetworks, Inc.

PLEASE TAKE NOTICE that Defendant MLB Advanced Media, L.P., moves the Court as follows, with hearing as noted in Local Rule CR 7(d)(2)(D).

MOTION

Pursuant to Fed. R. Civ. P. 26(c) and Local Rule 7(d)(2)(D), defendant MLB Advanced Media, L.P., ("MLBAM") moves the Court for a Protective Order staying discovery

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

Dockets.Justia.com

pending the Court's resolution of MLBAM's dispositive Motion to Dismiss Counter-claims and Motion to Dismiss Plaintiff's Claims, filed today.

This motion is supported by the Declaration of Mary K. Braza, filed herewith, and by the points and authorities set out below.

Introduction

Defendant MLB Advanced Media, L.P., asks the Court for a protective order staying all discovery in this action until this Court has ruled on MLBAM's Motion to Dismiss Counterclaims and Motion to Dismiss RealNetworks' Claims which, if granted, would dispose of the entire case.

FACTS AND BACKGROUND

Pursuant to the Court's Order Setting the Trial Date and Related Dates, discovery is to be completed in this case by September 1, 2004. During the last two weeks of August, both parties are set to engage in expensive and lengthy discovery matters. Depositions of party witnesses are presently scheduled for 5 or 6 days in Seattle and 2 or 3 days in New York. Plaintiff has also noticed and subpoenaed depositions of third-party witnesses for the same period. Witnesses are clearing time for preparation and testimony while lawyers are scheduling extensive travel, preparation and deposition time. In addition, the parties are currently trying to resolve disputes relating to discovery responses to interrogatories and requests for the production of documents. Proceeding with discovery during the last two weeks of August will increase litigation costs and expenses dramatically for each side.

As certified in the attached declaration: MLBAM has conferred in good faith with RealNetworks and has requested that RealNetworks join in a motion to the Court to extend the September 1, 2004, discovery deadline in order to allow further opportunity for meaningful exploration of settlement without the expense, effort and distraction of extensive discovery, but RealNetworks has refused. (Braza Decl. ¶¶ 2, 15.) The motions for dismissal that MLBAM filed

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

today, upon which this request for a protective order and stay of discovery is based, are grounded in part on jurisdictional defects of which RealNetworks has long been aware (*see* Braza Decl. ¶ 3 and referenced pleadings) but has failed to address, even though RealNetworks plans to proceed with discovery under the jurisdiction of this Court. When RealNetworks revealed on August 9 in its expert "disclosure" that not only did it lack jurisdiction for its claims, but it lacked a damages case as well, MLBAM realized that a motion to dismiss and a companion motion for protective order to stay discovery were warranted.

In order to prevent what could be the unnecessary expenditure of time and money by the parties and by third-parties, MLBAM asks the Court for a protective order staying discovery until the Court rules on MLBAM's pending Motion to Dismiss Counterclaims and Motion to Dismiss Plaintiff's Claims.

ARGUMENT

A district court possesses broad discretion in discovery matters. *Sempier v. Johnson & Higgins*, 45 F.3d 724, 734 (3d Cir. 1995) (stating that "district courts have broad discretion to manage discovery"); *Panola Land Buyers Ass'n v. Shuman*, 762 F.2d 1550 (11th Cir. 1985) (stating that a court has broad discretion to stay discovery pending a decision on a dispositive motion); *Rodgers v. United States Steel Corp.*, 536 F.2d 1001, 1006 (3d Cir. 1976) ("Federal Rule of Civil Procedure 26(c), which governs protective orders, reposes broad discretion in the district court to issue a variety of orders for the protection of the parties . . . in the discovery process.") Under circumstances similar to those presented here, courts have found a stay of discovery pending resolution of a dispositive motion with the potential to put an end to the litigation to be a proper exercise of that discretion. For example, in *Scroggins v. Air Cargo, Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976), the district court stayed general discovery pending resolution of defendant's summary judgment motion, noting that "we see no possible abuse of discretion in the order staying general discovery until the court could determine whether the case

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

would be resolved at the summary judgment stage." *See also Ingram Corp. v. J. Ray McDermott & Co.*, 698 F.2d 1295, 1304 (5th Cir. 1983) (finding that a decision to prevent unnecessary discovery because the case could well be decided on the parties' motions is not unfair to a party desiring discovery.) The reasons for staying discovery in this matter are even more compelling given that MLBAM's pending motion to dismiss addresses the lack of jurisdiction for RealNetworks' claims.

It is clear that nothing learned through the pending discovery would affect the outcome of MLBAM's pending motion to dismiss. The motion to dismiss is based entirely on the pleadings and short supplemental declarations on the jurisdictional facts, which are a matter of record and which go only to the citizenship of the parties.

Not only will a stay save the parties the time and expense of discovery that might be pointless, no prejudice or undue delay will arise from such a stay. As in *Scroggins*, MLBAM's motion, if granted, will dispose of the entire case. Should the Court deny MLBAM's motion to dismiss, a new discovery deadline can be set and discovery can be completed easily in advance of the next deadline on the Court's calendar, the February 21, 2005, dispositive motion deadline.

Proceeding with discovery while the motion to dismiss is pending would unnecessarily drain the parties' resources. The circumstances here are precisely those in which a stay of discovery pending resolution of the dispositive motion is a proper and sensible exercise of discretion. Given the strength of the dispositive motion and also the breadth of the discovery and the burden of proceeding with such discovery, MLBAM's motion for a protective order staying discovery should be granted.

CONCLUSION

For the foregoing reasons, the Court should grant MLBAM's Motion for Protective Order Staying Discovery.

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

Dated: August 19, 2004

FOLEY & LARDNER LLP

Mary K. Braza
Email: mbraza@foley.com
G. Michael Halfenger
Email: mhalfenger@foley.com
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306
Phone: 414-271-2400
Facsimile: 414-297-4900

GRAHAM & DUNN PC

/s/ James L. Magee

James L. Magee
Email: jmagee@grahamdunn.com
Laurene E. Somerville
Email: lsomerville@grahamdunn.com
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Phone: 206-624-8300
Facsimile: 206-340-9599

Attorneys for MLB Advanced Media, L.P.

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2004, I electronically filed DEFENDANT'S MOTION FOR PROTECTIVE ORDER STAYING DISCOVERY, DECLARATION OF MARY K. BRAZA, and proposed ORDER with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following individuals. I hereby certify that I also caused said documents to be delivered to the following individuals in the manner indicated:

Ralph H. Palumbo, Esq. Lynn M. Engel, Esq. Denise L. Ashbaugh, Esq. Summit Law Group 315 Fifth Avenue South Suite 1000 Seattle, WA 98104-2682 Phone: (206) 676-7000 Fax: (206) 676-7001	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail via Federal Express ☑ Facsimile Transmission ☑ ECF Filing - E-mail Transmission

DATED this 19th day of August, 2004.

FOLEY & LARDNER LLP

Mary K. Braza
Email: mbraza@foley.com
G. Michael Halfenger
Email: mhalfenger@foley.com
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306
Phone: 414-271-2400
Facsimile: 414-297-4900

GRAHAM & DUNN PC

/s/ James L. Magee
James L. Magee
Email: jmagee@grahamdunn.com
Laurene E. Somerville
Email: lsomerville@grahamdunn.com
Pier 70
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
Phone: 206-624-8300
Facsimile: 206-340-9599

Attorneys for MLB Advanced Media, L.P.